In the High Court of Judicature at Madras

Dated: 30/01/2003

Coram

The Hon'ble Mr.Justice P.D.DINAKARAN

Criminal Appeal No.390 of 1995 and Criminal Appeal No.418 of 1995

Sudha @ Sudhakar .. Appellant in
Crl.A.No.390/95

1.Balaji
2.Balaji @ Mohan
3.Dhana @ Dhanasekaran .. Appellants in
Crl.A.No.418/95

-Vs-

State,
rep. by Inspector of Police,
Vandavasi Police Station,
Crime No.101/94. .. Respondent in
both appeals.

Prayer:- Appeals are directed against the judgment of conviction and sentence dated 8.3.1995 passed by the learned Assistant Sessions Judge, Arani.

!For Appellant in : Mr.M.Yeswantha Rao for
Crl.A.390/95 M/s.M.V.Muralidaran

For Appellants in
Crl.A.No.418/95 : Mr.J.I.Rajkumar Robert

^For Respondent : Mr.K.V.Jayaprakash Narayanan
Govt. Advocate (Crl.Side)

:J U D G M E N T

Heard.

2. These appeals are directed against the judgment of conviction and sentence dated 8.3.1995 made in S.C.No.32 of 1994 on the file of the learned Assistant Sessions Judge, Arani. Criminal Appeal No.390 of 1995 is preferred by the fourth accused and Criminal Appeal No.418 of 1995 is preferred by accused 1 to 3 in the said Sessions Case No.32 of 1994. Since both the appeals arise from the same judgment dated 8.3.1995 made in S.C.No.32 of 1994,

they were heard and disposed of together.

3.1. The case of the prosecution as unfolded by the evidence of one Thiru.Thangavelu (P.W.1) and Thiru.Balaraman (P.W.2), who are working as Conductor and Driver, respectively, of a bus bearing Registration No.PY-01 9798 plying between Pondicherry and Thirupathi, operated by Pondicherry Tourist Development Corporation, is stated, in brief, as follows:

3.2. The bus bearing Registration No.PY-01 9798 owned by Pondicherry Tourist Development Corporation while plying between Thirupathi and Pondicherry was returning from Thirupathi to Pondicherry on the night of 20.1.1994. It reached Vandavasi at about 1.45 a.m. on 21.1.1994. After a break of 10 minutes for tea at Vandavasi, it proceeded to Pondicherry. Within ten minutes when the bus was nearing Maruthuvambadi Cross Road, the accused, who were standing near the Conductor(P.W.1), assaulted him (P.W.1). The passengers screamed loudly. The Driver (P.W.2) switched on the light, questioned the assault by the accused and stopped the vehicle. Immediately, the accused attacked the Driver (P.W.2) by using knives and snatched away a blue colour leather cash bag (M.O.1) from P.W.1, containing the collection of the bus fare; took a brown colour rexin bag (M.O.2), containing one white shirt (M.O.3), one blue colour checked lungi (M.O.4), a small towel (M.O.5) and the identity card (M.O.6) of the Conductor and fled away on seeing a lorry coming from the opposite direction, in which one Ameed of Vandavasi Town, a fruit merchant, was travelling. The said Ameed (P.W.5) shifted the Conductor (P.W.1) and the Driver (P.W.2) in the said lorry to Vandavasi Bus Stand, from where P.Ws.1 and 2 were taken to the Government Hospital, Vandavasi, by a police constable Ganesan (P.W.6), who was on beat duty at Vandavasi bus stand.

3.3. Both the Conductor (P.W.1) and the Driver (P.W.2) were admitted in the Government Hospital, Vandavasi by Dr.I.Ramalingam (P.W.11) at 3.15 a.m. on 21.1.1994 and P.W.11 issued Accident Registers Exs.P15 and 16 recording the injuries on the body of P.Ws.1 and 2 respectively. In the Government Hospital, Vandavasi, P.W.1 gave a statement about the occurrence (Ex.P.1) at about 4.15 a.m. on 21.1.1994, and the same was recorded by a Police Constable T.L.Paulraj (P.W.13), based on which P.W.13 registered a First Information Report (Ex.P.19). After giving first aid in the Government Hospital, Vandavasi, P.Ws.1 and 2 were referred to the General Hospital, Pondic herry, for further management and treatment. Accordingly, P.Ws.1 and 2 were admitted in the General Hospital, Pondicherry, in the casualty ward by Dr.P.Muthayan (P.W.12), who issued the Medicolegal Examination Reports, marked as Exs.P.17 and 18 with respect to the wounds found on the Conductor (P. W.1) and the Driver (P.W.2).

3.4. In the meanwhile, the Inspector of Police at Vandavasi, K.R. Natesan (P.W.14) undertook investigation on the FIR (Ex.P.19), went to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.20) in the presence of the Village Administrative Officer(P.W.7), of Illangadu Village. As per Ex.P.2 Observation Mahazar, the occurrence had taken place 4 kms. away on the southern side of Vandavasi Police Station in Vandavasi to Tindivanam Road near Maruthuvampadi Cross Road, where the bus PY-01 9798 belonging to the Pondicherry Tourist Development Corporation was

standing in the middle of the road towards Tindivanam. P.W.14 in his Observation Mahazar (Ex.P.2) recorded that he noticed blood stains on the driver's seat, door and body of the bus as well as on the road where the bus was standing.

3.5. From the place of occurrence, P.W.14 recovered the following material objects under a mahazar (Ex.P3) in the presence of P.W.7 and one Azirvadham:-

(i) one pair of rubber sandal chappal (M.O.16);
(ii) a rose colour turki towel with blue colour stripes (M.O.17);
(iii) trip sheet from 1.1.1994 to 20.1.1994 with respect to PY-01-979 8 (M.O.18); and
(iv) a ticket book bearing tickets containing Serial Numbers 793201 to 793600 wherein the tickets were used upto Serial Number 793566 (M. O.19).

3.6. An investigation team (party sakitham) lead by P.W.14 and accompanied by P.W.7, who is familiar in and around Vandavasi, went in search of the accused to apprehend them. When the investigation team was moving towards Vandavasi-Tindivanam Road, after enquiring ten persons, they came across a suspicious person by name Balaji (A1) near Industrial Training Institute at Ponnur Road at about 3.00 p.m, and as he was attempting to move away, P.W.14 interrogated him. During the interrogation, P.W.14 recovered the following material objects from A1 under a mahazar Ex.P.4 in the presence of P.W.7:-
(i) a sum of Rs.1200/- (100 rupees currency note - 12 numbers) (M.O.2 0 series); and
(ii) a ticket No. 793527 (M.O.21);

3.7. The said Balaji (A1) gave a confession statement (admitted portion in the confession statement was marked as Ex.P.22) in the presence of P.W.7. Based on the confession statement Ex.P.22, P.W.14 proceeded to the lands owned by one Veerasami, which is near the place of occurrence and recovered the following material objects under a mahazar (Ex.P6) in the presence of P.W.7:-
(i)a black colour leather cash bag (M.O.1);
(ii)a rexin bag (M.O.2);
(iii)identity card of the Conductor (M.O.6); and
(iv) four pattaknives (M.Os.10 to 13);

3.8. On the information furnished by A1 in his confession statement marked as Ex.P.22, P.W.14 proceeded to Kancheepuram bus stand where the other accused A2, A3 and A4 were supposed to wait for A1. Accordingly, on reaching Kancheepuram bus stand, P.W.14 found A2, A3 and A4, namely, Balaji @ Mohan, Dhana @ Dhanasekaran and Sudha @ Sudhakaran waiting for the said Balaji (A1) near a tender coconut shop. Identified by A1, P.W.14 arrested A2, A3 and A4 at Kancheepuram bus stand at 6.00 p.m. on 21.1.1994. Immediately, a search was conducted by P.W.1 4 on A2, A3 and A4. P.W.14, during the search recovered the following material objects under a Mahazar (Ex.P11) in the presence of P.W.7:-
(i)Rs.565/- (M.O.22 series) (100 rupees currency note - 5 numbers, 20 rupees note - 1 number, 10 rupees note - 2 & 5 rupees note - 5 numbers); and
(ii) and a ticket No.793528 (M.O.23) from A2;
(iii) Rs.570/- (M.O.24 series) (100 rupees note - 5 numbers, 20 rupees note -

2 numbers & 5 rupees note - six numbers); and
(iv)a ticket No.793529 (M.O.25) from A3;
(v) Rs.560/- (M.O.26 series) (100 rupees note - 3 numbers, 50 rupees note - 4 numbers, 20 rupees note - 1 number & 5 rupees note - 8 numbers); and
(vi)a ticket No.793530 (M.O.27) from A4.

3.9. A2 and A3 gave confession statements to P.W.14 and the admitted portion in the confession statements were marked as Exs.P23 and 24 respectively. Based on the confession statement of A2, P.W.14 seized a checked lungi (M.O.4) under a mahazar Ex.P.10 in the presence of P. W.7 and based on the confession statement of A3, P.W.14 seized a white shirt (M.O.3) from A3 under a Mahazar (Ex.P.11) in the presence of P.W.7.

3.10. P.W.14 took further investigation into the matter, examined the witnesses and filed a final report against the accused for the offences punishable under Sections 392, 397, 326 and 506(ii) I.P.C. before the learned Judicial Magistrate, Vandavasi, who committed the case to the learned Assistant Sessions Judge, Arani.

4. The learned Assistant Sessions Judge, Arani, framed charges against A1 to A4 under Section 392 I.P.C. for the robbery of Rs.3,000/-; under Section 392 r/w 397 I.P.C. for having caused grievous injuries on the Conductor (P.W.1) and the Driver (P.W.2) by using deadly weapons (M.Os.10 to 13) while committing the said robbery; under Section 3 26 I.P.C. for having caused grievous hurt by cutting the Conductor (P.W.1) with a pattaknife on his right eye-brow, right forehead, both left and right arms, right fore arm and right little finger and for having caused grievous hurt by cutting the Driver (P.W.2) with a pattaknife on his left hand, right arm, left thumb, tenderness over the left knee; and under Section 506(ii) I.P.C. for having threatened the passengers to cause death during the occurrence.

5.1. During the trial, 14 witnesses were examined as P.Ws.1 to 14, 2 4 exhibits were marked as Exs.P1 to P24 and 34 material objects were produced as M.Os.1 to 34, on behalf of prosecution.

5.2. Among 14 witnesses, the Conductor was examined as P.W.1, the Driver was examined as P.W.2; two passengers, who travelled in the bus and had seen the occurrence, were examined as P.Ws.3 and 4, and one Ameed was examined as P.W.5, who was travelling in the lorry, which came from the opposite side at about 2 a.m. on 21.1.1994, stopped near the place of occurrence, rescued P.Ws.1 and 2 and shifted them to the Vandavasi bus stand, from where Beat Police Ganesan (P.W.6) took P.Ws.1 and 2 to the Government Hospital, Vandavasi. P.W.11 was the medical witness, namely, Dr.I.Ramalingam, who admitted P.Ws.1 and 2 in the Government Hospital, Vandavasi, and referred P.Ws.1 and 2 to the General Hospital, Pondicherry, where P.Ws.1 and 2 were admitted by Dr.P.Muthayan (P.W.12) in the casualty ward. P.W.7 was the Village Administrative Officer, who accompanied the investigating team lead by P.W.14. P.W.8 is the witness to the mahazar for the recovery of blood stained clothes of P.Ws.1 and 2. P.W.10 was the Judicial Magistrate, Cheyyar, who conducted an identification parade. P.W.13 was a Police Constable, who recorded the statement of P.W.1 (Ex.P1) in the Government Hospital, Vandavasi.

5.3. On the side of the defence, 6 witnesses were examined as D.Ws.1 to 6 and 11 exhibits were marked as Exs.D1 to D11.

5.4. While questioning the accused under Section 313 Cr.P.C. after the trial, the accused pleaded not guilty and A1, A2 and A3 stated that they never travelled in the bus from Thirupathi to Pondicherry. A4 stated that he was travelling with his mother (D.W.3) to go to the Ashramam at Pondicherry. As there was no bus to go to Melmaruvathur while coming from Vellore to Vandavasi, they stayed at Vandavasi bus stand on 20/21.1.1994, and that he was arrested on suspicion and charged for the above offence. D.Ws.1 and 5 are the reporters of "Dina Malar" and "Malai Malar" respectively, through whom the accused marked Ex.D1 dated 22.1.1994 and Ex.D.2 dated 23.1.1994 respectively with respect to the press news about the crime. D.Ws.2, 4 and 6 are the police officials, who accompanied P.W.14 during the search of the accused. D.Ws.2 and 4 were working in Vandavasi Police Station during the relevant time while D.W.6 was working in Vadavannakampadi Police Station.

6. The learned Assistant Sessions Judge, Arani, appreciating the evidence on record, convicted the accused for the offence punishable under Sections 392, 392 r/w 397, 326 and 506(ii) I.P.C. and sentenced them to undergo R.I. for 10 years with a fine of Rs.1000/- in default one year R.I. under Section 392 I.P.C; 10 years R.I. with a fine of Rs.1000/- in default one year R.I. under Section 392 r/w 397 I.P.C.; 1 0 years R.I. with a fine of Rs.1000/- in default one year R.I. under Section 326 I.P.C.; and 7 years R.I. with a fine of Rs.1000/- in default one year R.I. under Section 506(ii) I.P.C. and all the sentences to run concurrently deducting the sentence already undergone. Hence, these appeals.

7. Mr.Yeswanth Rao, learned counsel appearing for the appellant in Crl.A.No.390/95 and Mr.Rajkumar Robert, learned counsel appearing for the appellants in Crl.A.No.418/95, waded through the evidence available on record, as well as the judgment of the learned trial Judge and contend vehemently as follows:

(i) The prosecution failed to explain the basis for suspecting A1 in the above crime. In the absence of any room for suspecting A1, there could not be any assumption of guilt for which A1 could be charged and tried. Consequently, the very arrest of A1, the recording of confession statement of A1, the recovery of the material objects based on the confession of A1, and the arrest of A2 to A4 are all liable to be rejected;

(ii) There is no proper explanation for not citing any local witness with respect to:
(a)the arrest of A1;
(b)the recording of confession statement of A1 (Ex.P22);
(c)the recovery of leather bag (M.O.1), rexin bag (M.O.2), identity card (M.O.6) and four pattaknives (M.Os.10 to 13) under mahazar (Ex.P.6);
(d)the recovery of a white shirt (M.O.3) on the confession made by A3 (Ex.P24) under mahazar (Ex.P.11);
(e)the recovery of a checked lungi (M.O.4) on the confession made by A2 (Ex.P23) under mahazar (Ex.P10);

(f)the recovery of one pair of rubber sandal chappal (M.O.16) under Ex.P3;
(g)the recovery of a blood stained rose colour blue checked towel (M.O.17) from the scene of occurrence under Ex.P3;
(h)the recovery of trip sheet from 1.1.1994 to 20.1.1994 with respect to the bus bearing registration No.PY-01-9798 (M.O.18) under Ex.P3;
(i)the recovery of a sum of Rs.1200/- (M.O.20 series) and a ticket No.793527 (M.O.21) from A1 under mahazar (Ex.P4)
(j)the recovery of a sum of Rs.565/- (M.O.22 series) and a ticket No.793528 (M.O.23) from A2 under mahazar (Ex.P7);
(k)the recovery of a sum of Rs.570/- (M.O.24 series) and a ticket No.793529 (M.O.25) from A3 under mahazar (Ex.P7); and
(l)the recovery of a sum of Rs.565/- (M.O.26 series) and a ticket No.793530 (M.O.27) from A4 under mahazar (Ex.P7);

(iii) Even though P.W.7 was the Village Administrative Officer of Illangadu Village, there is no proper explanation on behalf of the prosecution as to why he accompanied the Investigating Officer (P.W.14) till all the accused were arrested, their confession statements were recorded and the material objects were recovered;

(iv) P.W.7, could not be a natural witness for all the arrests and recovery of material objects, from different places at different points of time. Therefore, in the absence of any other independent local witness, it would not be safe to convict the accused placing reliance on the evidence of P.W.7;

(v) When the Conductor (P.W.1) in his earliest statement marked as Ex.P1 recorded at about 4.15 a.m. on 21.1.1994, based on which, the first information report (Ex.P.19) was registered, had stated that two persons assaulted him on his head and both arms repeatedly with long knives and snatched away the cash bag (M.O.1) which contains Rs.3000/- and also took the rexin bag (M.O.2) which c ontains a white shirt (M.O.3) and a checked lunghi (M.O.4), and other two persons assaulted the Driver (P.W.2) on his arms with a long knife, there is no basis for framing the above charges against A1 and A2 that they assaulted the Conductor (P.W.1) and A3 and A4 assaulted the driver (P.W.2);

(vi) Even though P.W.1 had stated in his statement (Ex.P.1) that he could identify the accused if they were seen in person, as recorded in the First Information Report (Ex.P.19), he could not have seen the accused for want of sufficient light at the time of occurrence. Inviting attention to the evidence of P.Ws.1 and 2, Mr.Rajkumar Robert, points out that P.W.1 shouted only after receiving three cut injuries and the Driver (P.W.2) switched on the light only after hearing the cry of the Condcutor (P.W.1). Relying on the decision of the Supreme Court in State of Uttar Pradesh vs. Jageshwar and others, reported in AIR 1983 SC 349, Mr.Rajkumar Robert contends that in the absence of any evidence that there was minimum light at the time of occurrence, it may not be safe to accept the statement of P.W.1 made in Ex.P1, that he could identify the accused if seen in person. It is further contended that the identification of the accused by the Conductor (P.W.1) and the Driver (P.W.2) could not be relied upon without any proper explanation for the delay

of three months for conducting the identification test. In this regard, Mr.Rajkumar Robert, learned counsel appearing for the appellants, places reliance on the following decisions;

(1)Budhsen vs. State of Uttar Pradesh, reported in AIR 1970 SC 1321;
(2)Kanan vs. State of Kerala, reported in AIR 1979 SC 1127;
(3)Soni vs. State of Uttar Pradesh, reported in (1982) 3 SCC 368(I);
(4)State of Uttar Predesh vs. Jageshwar, reported in AIR 1983 SC 349;
(5)Subash vs. State of Uttar Pradesh, reported in AIR 1987 SC 1222;
(6)State of Andhra Pradesh vs. M.V.Ramana Reddy, reported in (1991) 4 SCC 536;
(7)Chotey Lal vs. State of Uttar Pradesh, reported in 1994 SCC (Cri) 144; and
(8)Ashish Batham vs, State of Madhya Pradesh, reported in AIR 2002 SC 3206;

(vii) Even though the Conductor (P.W.1) in his statement (Ex.P.1) had stated that the accused used long knives, he had deposed before the Court that the accused used "Veecharuval". On the other hand, the Driver (P.W.2) had deposed that the accused used pattaknives, and P.Ws.3 and 4 (passengers), who were examined as eye witnesses, had deposed that the accused used "knives" for criminal intimidation. These discrepancies with respect to the description of the weapons used for the commission of the offence vitiates the case of the prosecution;

(viii) While the prosecution had chosen to examine one Ameed (P.W.5), as a chance witness, who was travelling in a lorry, which came from the opposite direction, and reached the place of occurrence immediately after the crime, there is no proper explanation by the prosecution for not examining the driver of the said lorry;

(ix) There is no evidence by P.W.5, who was the first person to arrive at the place of occurrence immediately after the crime, that he had seen P.Ws.3 and 4 when he reached the place of occurrence;

(x) P.Ws.1 and 2 were not specifically questioned by the learned Judicial Magistrate No.I, Cheyyar, who conducted the identification parade, as to whether P.Ws.1 and 2 had any occasion to see the accused before conducting the identification parade.

(xi) In the absence of any specific identification by the Conductor (P.W.1) that A1 and A2 assaulted him by pattaknives and by the Driver (P.W.2) that A3 and A4 assaulted him by using knives, it may not be safe to rely on the report of the identification parade (Ex.P14), as P.Ws.1 and 2 had also an occasion to see the photographs of the accused, which were published in "Dina Malar" (Ex.D1) and "Malai Malar" (Ex.D10), as proved by the evidence of D.Ws.1 and 5 in the light of Exs.D1, D2, D3, D4, D5, D10 and D11. Hence, the conviction of the accused based on the report of the identification parade (Ex.P.14) is unsafe and in this regard reliance was placed on the decision of the Supreme Court in State of Andhra Pradesh vs. M.V.Ramana Reddy, reported in 1991 4 SCC 536;

(xii) The evidence of the Investigating Officer (P.W.14) is totally unreliable as his evidence does not corroborate with any of the substantive witnesses except the evidence of P.W.7, whose evidence has to be discarded, as he could not be a natural witness either to the arrest or for recording the confession statement or to the recovery of material objects;

(xiii) The failure to send the material objects for finger print test, and the blood stained weapons to the Serologist's test create a serious doubt which would benefit the accused;

(xiv) While P.Ws.3 and 4 and D.W.3 deposed that the Investigating Officer (P.W.14) collected tickets from them, P.W.14 denies the same; and

(xv) In view of the above contradictions in the evidence and serious infirmities, deficiencies and impossibilities in the prosecution case, as held by the Apex Court in Toran Singh vs. State of Madhya Pradesh, reported in AIR 2002 SCP 2807, it may not be safe to convict the accused.

8. In reply, Mr.K.V.Jayaprakash Narayanan, learned Government Advocate (Criminal Side) appearing for the respondent, submits that:

(i) There is no reason to disbelieve the statement of P.W.1 recorded in Ex.P.1 that he could identify the accused if seen in person, as Ex.P.1 was recorded at about 4.15 a.m. on 21.1.1994 immediately after two hours;

(ii) Even though there are discrepancies with respect to the description of weapons, viz., Pattaknife/ Veecharuval/Knives, used in the crime, as deposed by P.Ws.1, 2, 3 and 4, it is contended that such minor discrepancies would not vitiate the case of the prosecution, when their evidence corroborates with the medical evidence of P.W.11 and P.W.12, the Accident registers Exs.P15 and P16, and the Medico-legal Examination Reports Exs.P17 and P18, as well as the material objects M.Os.10 to 13;

(iii) Even though the assault was initiated on P.W.1 in red light, P.Ws.3 and 4 categorically stated that immediately after the initial attack by the accused on the Conductor (P.W.1), the Driver (P.W.2) switched on the light. On the other hand, the medical evidence, referred to above, shows that P.Ws.1 and 2 sustained more cut injuries. Since the latter injuries were

caused after the light was switched on, the decision of the Apex Court in STATE OF UTTAR PRADESH Vs. JAGESHWAR AND OTHERS, referred supra, is not applicable to the facts of the case;

(iv) Being a highway robbery, admittedly, there was a wide coverage in the press about the alleged occurrence on the very same day immediately after the occurrence i.e. on 21.1.1994, in two dailies, namely, "Dhina Malar" dated 22.1.94 (Ex.D1) and "Malai Malar" dated 21.1.94 (Ex.D10), which have circulation in that locality. Hence, the said publication of the news by the press, by itself could not render the prosecution case weak or doubtful;

(v) In view of the grave nature of the crime, which had taken place, a team of

police officials headed by the Investigating Officer (P.W.1 4) was entrusted with the task of apprehending the culprits, to ensure the confidence in the minds of the general public. Therefore, neither the non-examination of D.Ws.2, 4 and 6, who accompanied P.W.14 during his investigation of the crime and search of the culprits, on the prosecution side, nor any minor contradiction or discrepancy among the evidence of P.W.14 or P.W.7, the Village Administrative Officer of Illangadu Village, who accompanied the investigation team, could not be a ground to discredit the evidence of P.Ws.7 and 14, who spoke about the arrest of A1, recording of confession statement of A1 (Ex.P.22), the recovery of the weapons (M.Os.10 to 13) used for commission of the crime, and the arrest of A2, A3 and A4. The presence of P. W.7, Village Administrative Officer of Illangadu Village throughout the search and arrest of the accused, seizure of the material objects, to be a witness for the confession statement of A1, A2 and A3 as well as a mahazar witness for recovering the material objects also could not be a ground to reject his evidence totally, as P.W.7, being Village Administrative Officer, is familiar with the locality in and around the place of occurrence. Therefore, the arrest of the A1; his confession statement; recovery of material objects M.Os.10 to 13; the arrest of A2, A3 and A4; the confession statements of A2 and A3; and the recovery of material objects from them, could not be rejected for want of local witnesses to the respective mahazars;

(vi) The evidence of P.Ws.1 and 2 could not be lightly discarded as they were injured eye witnesses. No reason could be attributed against them for implicating the accused; and

(vii) The evidence of the chance witness (P.W.5), corroborates with the testimony of P.Ws.1 to 4 with respect to the time and place of occurrence as well as the injuries sustained by the Conductor (P.W.1) and the Driver (P.W.2), which in turn, corroborates with the evidence of the Doctor (P.W.11), who admitted P.Ws.1 and 2 at the Government Hospital, Vandavasi and referred them to the General Hospital, Pondicherry, where P.Ws.1 and 2 were admitted by Doctor (P.W.12) in the casualty ward. The Accident Registers (Ex.P.15 and P16) issued by P.W.11 with regard to the injuries sustained by P.Ws.1 and 2 and the Medico-legal Examination Reports Exs.P17 and P18, issued by P.W.12 speak about the wounds on the body of P.Ws.1 and 2 respectively, and further strengthens the case of the prosecution that they were assaulted by the accused by using the deadly weapons (M.Os.10 to 13).

9. I have bestowed my careful consideration to the submissions of both sides and have perused the relevant material evidence on record.

10.1. The crime in question is a highway robbery, an offence which shakes the confidence of safety in the minds of the general public and drags them to the sense of insecurity while travelling and moving around. The evidence relied upon by the accused, namely, the press coverage about the occurrence marked as Ex.Ds.1, 2, 3, 4, 5, 10 and 11 itself is a strong proof for the occurrence said to have taken place between 1.45 and 2 a.m. on 21.1.1994, while the bus belonging to Pondicherry Tourist Development Corporation was driven by one Balaraman (P.W.2) with one Thangavelu (P.W.1) as a Conductor, immediately within 10 minutes after the bus left Vandavasi. The

evidence relied upon by the accused Exs.D.1,2,3,4,5,10 and 11 as corroborated by the evidence of the press reporters (D.Ws.1 and 5) further proves the occurrence of the crime.

10.2. When such fear and apprehension was spreading in the locality due to the alleged crime, naturally, the State was obliged to act swiftly by forming an investigation team (Party Sakitham) headed by P.W.1 4 for an immediate and effective investigation. Stimulus with such public duty, the Investigating Officer (P.W.14) based on the statement of P.W.1 (Ex.P.1) recorded by P.W.13, went to the scene of occurrence at about 6 a.m. on 21.1.1994, prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.20) in the presence of P.W.7. The Rough Sketch, as seen from the original, shows that the occurrence had taken place amidst dense trees on both the sides of the VandavasiTindivanam Road. The occurrence had taken place at 2.00 a.m. almost in the mid-night. When such a grave crime was said to have taken place in an isolated densely area, certainly the State police was burdened to set the police machinery on motion to apprehend the culprits at the earliest possible, as otherwise the apprehension and insecurity in the minds of the general public would be spreading all around the State.

10.3. Under such backdrop, P.W.14, the Investigating Officer, reached the place of occurrence and found the bus bearing Registration No. PY-01-9798 belonging to the Pondicherry Tourism Development Corporation stopped in the middle of the road. P.W.14 observed the blood stains on the seat of the Conductor and that of the Driver and also on the body of the bus and on the road where the bus was standing. P.W.14 recovered towel (M.O.17) from the scene of occurrence. Further, P.W.1 4 with his investigation team (party sakitham) went in search of the culprits in and around the locality after preparing the Observation Mahazar (Ex.P.2) at about 6 a.m. P.W.7, who is also a public servant, viz., Village Administrative Officer, of Illangaudu Village, got into the jeep, accompanied the investigation team and moved from place to place in search of the accused. At about 3 p.m., they came across A1 near Industrial Training Institute, Ponnur, who was a stranger to the locality and therefore, was arrested on suspicion. When the prosecution proposed to fix the guilt on a person, who was arrested on suspicion, it is a trite law that more judicial caution is required in the judicial armoury because "greater the crime, greater should be the standard of proof". The Court is, therefore, inclined to see whether A1 much less A2 to A4 who were arrested based on the confession statement of A1 could be convicted merely on the basis of suspicion.

10.4. The serious contention of Mr.Rajkumar Robert, learned counsel appearing for the appellants, is that there was no convincing reason or explanation for not citing the witnesses of the locality either for the arrest of A1 or for his confession statement or for recovery of the material objects, viz., M.Os.10 to 13, based on the confession statement of A1, or for the arrest of A2 to A4, or for the seizure of the material objects from them, etc., except the evidence of P.W.7 through out. Of course, a serious complaint was also made on behalf of the appellants/accused about the continuous presence of P.W.7 during the investigation, arrest of A1, recording his confession statement, recovery of M.Os.10 to 13, and thereafter during the arrest of A2

to A4, recording their confession statements and while recovering other material objects from them.

10.5. Even though the contention of the learned counsel appearing for the appellants is impressive, in my considered opinion, as no motive could be attributed against him (P.W.7), the company of P.W.7 with the investigation team cannot be either disbelieved or rejected as untrustworthy merely for want of any local witness. The investigation had been mooted immediately after the occurrence with all seriousness for apprehending the culprits. P.W.14 leading the investigation team to apprehend the culprits moved all around in the place of occurrence from 6 a.m. i.e. immediately within four hours from the time of occurrence. The only person, who is also a public servant and was familiar with the locality, available, anxious and willing to accompany the team of investigation in the jeep, at that time, was P.W.7. Viewing the company of P.W.7 with the investigation team headed by P.W.14 from this angle, I do not see any reason to disbelieve his being a witness to the Mahazars throughout. P.W.7 and P.W.14 cogently and corroboratively narrated the course of

investigation conducted as well as the arrest of the accused, recording of confession statements of A1, A2 and A3, search and seizure of material objects from them.

10.6. Before proceeding further, it is apposite to consider the evidence of P.Ws.1 and 2. P.Ws.1 and 2 are injured eye witnesses and their evidence must be ranked high, but cannot be underestimated, as normally the injured witnesses do not screen the real offender and involve an innocent person in his place.

10.7. Of course, the Court is bound to test whether the injured had an opportunity of seeing, recognizing, or identifying the assailant or whether there was any possibility of false implication of an innocent person leaving the real and the actual assailant free. Even though a suggestion was made to P.Ws.1 and 2 in the cross examination that they had enemies in their trade union activities and that the occurrence could have been caused at the instance of their trade union rivals, I do not find any reason to appreciate the said defence, because, if the occurrence had taken place at the instance of trade union rivals, P.Ws.1 and 2 would have straightaway pointed out their fingers against them and would not have chosen to implicate the innocent persons to rope them into the crime.

10.8. On the other hand, the evidence of P.Ws.3 and 4, passengers who travelled in the same bus, who spoke about the occurrence and the injuries caused on P.Ws.1 and 2, corroborate with the evidence of chance witness (P.W.5) and that of medical evidence (P.Ws.11 and 12) supported with documentary evidence, viz., accident registers (Exs.P15 and 16) and the Medicolegal Examination Reports (Exs.P17 and 18). On the whole, both the injured eye witnesses and eye witnesses cogently say that all the accused participated in the attack. That apart, the recovery of the robbed properties of P.W.1 based on the confession statements of A1, A2, A3 and the absence of any iota of evidence to indicate that any of the above injured eye witnesses (P.Ws.1 and 2), or eye witnesses (P.Ws.3 and 4) had any reason to join hands

with the police to falsely implicate the accused, neither the presence of P.Ws.1 and 2 nor their testimony with reference to the commission of crime can be doubted.

10.9. Having held that the testimony of the injured eye witnesses (P.Ws.1 and 2), as well as the evidence of the Mahazar witness (P.W.7), and that of the investigation Officer (P.W.14) are trustworthy and the recovery of the properties of P.W.1, namely leather cash bag (M.O.1), rexin bag (M.O.2), checked lungi (M.O.4), and the towel (M.O.5) from the accused 1 to 4 corroborates with that of the evidence of P.W.s.1, 2, 7 and 14, the absence of any explanation by the accused for possession of such material objects, namely properties of P.W.1, further strengthens the case of the prosecution, as it is well settled in law that absence of proper explanation for the possession of the property stolen leads a presumption against the accused under Section 114 (3) Illustration (A) of the Indian Evidence Act, as held by the Apex court in SANJAY Vs. STATE (NCT OF DELHI) reported in 2001 SCC (Cri) 4 49; GEORGE Vs. STATE OF KERALA reported in 2002 Cri.L.J. 2031; and EZHIL Vs. STATE OF TAMIL NADU reported in 2002 Cri.L.J. 2799.

10.10. Placing reliance on the decisions in:
(i)Budhsen vs. State of Uttar Pradesh, reported in AIR 1970 SC 1321;
(ii) Kanan vs. State of Kerala, reported in AIR 1979 SC 1127;
(iii)Soni vs. State of Uttar Pradesh, reported in (1982) 3 SCC 368(I);
(iv)State of Uttar Predesh vs. Jageshwar, reported in AIR 1983 SC 349 ;
(v)Subash vs. State of Uttar Pradesh, reported in AIR 1987 SC 1222;
(vi) State of Andhra Pradesh vs. M.V.Ramana Reddy, reported in (1991) 4 SCC 536;
(vii) Chotey Lal vs. State of Uttar Pradesh, reported in 1994 SCC (Cri) 144; and
(viii)Ashish Batham vs, State of Madhya Pradesh, reported in AIR 2002 SC 3206,

Mr.Rajkumar Robert, learned counsel for the appellants contends that there are lapses on the part of the investigating officer for not conducting the identification test parade immediately after the occurrence. There is every necessity of an identification test parade in a robbery case and such identification test parade should be conducted at the earliest point of time particularly, when the crime was said to have been committed in dim light, and elapse of long-time in conducting the identification test parade cannot be entertained as the photographs of the accused were published by the press.

10.11. The cardinal rule of law laid down by a catena of decisions, referred supra, is not disputed by the prosecution side. That apart, it is also settled law that there cannot be a hard and fast rule that the identification test parade conducted should be rejected merely on the ground that there was a delay in conducting the identification test parade, when such delay could be explained. It depends upon the facts and circumstances of each case and the condition of the witness to attend the identification test parade. In the instant case, the medical evidence of P.Ws.11 and 12 supported with the documentary evidence, namely accident registers (Exs.15 and 16) and

the Medicolegal Examination Reports (Exs.P17 and 18), clearly prove the grave nature of the injuries sustained by P.Ws.1 and 2. The production of blood stained cloths of P.Ws.1 and 2 corroborates with the grievous nature of the injuries. P.Ws.1 and 2 were treated as inpatient for nearly one month and thereafter as outpatients. P.W.1 in his earliest statement (Ex.P1), which was recorded immediately after two hours of the occurrence, had stated that he could identify the accused if seen in person. If that be so, the delay in conducting the identification test parade for identifying the accused 1 to 4 by P.Ws.1 and 2, itself, cannot be a legitimate ground to disbelieve the testimony of P.Ws.1 and 2, who are injured eye witnesses.

10.12. With regard to the other ground of attack on the identification test parade that the learned Judicial Magistrate-I, Cheyyar, who conducted the identification test parade has not taken sufficient caution to confirm whether the P.Ws.1 and 2 had any occasion to see the accused before conducting the identification parade, I am of considered opinion that such lapses in the procedure would not, by itself, be a justification to reject the evidence of P.Ws.1 to 4, as held by the Apex Court in SOMAPPA Vs. STATE OF MYSORE reported in AIR 1979 SC 1 831.

10.13. Narrating the beginning of the attack, P.W.2, the other injured eye witness, in his deposition stated that he heard the outcry of the conductor, immediately switched on the light and turned back and witnessed all the four accused assaulting P.W.1. When P.W.2 questioned them, the accused shouting "Cut him also, why he pressed the horn and switched on the light", started assaulting him. In his crossexamination P.W.2 stated that two persons standing in front and two persons standing in the back of the Conductor (P.W.1) assaulted him and thereafter, he (P.W.2) applied brake and prevented the attack, but sustained injury and got down from the bus and fainted.

10.14. The other eye witness P.W.3, who was a passenger travelling in the same bus from Kancheepuram to Pondicherry, at the time of occurrence, deposed that P.W.1 shouted when someone was attacking him and immediately P.W.2 tried to prevent the attack, but the accused attacked P.W.2 also. P.W.3 further confirmed that the accused firstly attacked P.W.1, immediately P.W.2 switched on the light, followed by that the accused attacked P.W.2, and extorted the passengers. When the accused saw a lorry coming from the opposite direction, they snatched the cash bag (M.O.1) from P.W.1, took rexin bag(M.O.2) and fled away.

10.15. P.W.4, another eye witness, who travelled from Tirupathi to Pondicherry in the same bus, at the time of occurrence, corroborating with the evidence of P.Ws.1, 2 and 3 deposed that she was awake from Tirupathi to Tiruttani and then slept for some time when the bus left Tiruttani and reached Vandavasi. At Vandavasi, all other passengers had tea. After sometime, the bus left Vandavasi, P.W.2 alarmed and cried for help and on hearing the noise all the passengers woke up and shouted having found P.W.1 and P.W.2 cut. P.W.4 deposed that two persons who were standing near P.W.1. snatched the cash bag (M.O.1) and ran away and two persons attacked P.W.2 and ran away. P.W.4 after narrating the incidents, also stated that all the passengers stayed at the place of occurrence for nearly one hour till the police came

there and thereafter, they came by walk to the police-station. P.W.4 also deposed that, when P.W.1 was moving back immediately after the attack, P.W.4's saree got blood stained. Even though the Police did not recover the said saree, obviously for the reason that P.W.4 would not have had another saree to change, in my considered opinion, there is no need to doubt the testimony of P.W.4 as no motive is attributed against her and her evidence corroborates with that of P.Ws.1 to 3. If the evidence, of P.Ws.1 to 4 are scrutinised minutely, they clearly prove that all the accused jointly attacked P.Ws.1 and 2, snatched the cash bag (M.O.1), rexin bag (M.O.2) and committed extortion.

10.16. P.Ws.1 and 2 graphically narrated the event of crime. The evidence of P.Ws.3 and 4, natural witnesses, who travelled in the same bus cogently speaks about the occurrence. A collective appreciation of the evidence of P.Ws.1 to 4, shows that even though the accused initially attacked in the red light all the eye witnesses deposed that immediately after the second attack on P.W.1 the Driver (P.W.2) switched on the light and thereafter the accused attacked P.Ws.1 and 2 causing further injuries, snatched the cash bag (M.O.1) with cash and ran away with the shoulder rexin bag (M.O.2) with the materials therein. The injuries sustained by P.Ws.1 and 2 as mentioned in Exs.P.15 and 16 respectively, read as follows:

Injuries sustained by P.W.1
1) An incised wound over the right eye brow 1" x +" x ," bleeding.
2) An incised wound over the right fore head 1" x +" x ," bleeding.
3) An incised wound over the left fore arm upper 1/3rd 3"x1"x1" bleeding.
4) An incised wound over the right arm interior upper 2" x ," x +" bleeding.
5) An incised wound over the right fore arm Medial Middle 1/3" 3" x 1" x 1".
6) An incised wound over the right little finger palmar surface dorsal 1" x ," x ," bleeding.

Injuries sustained by P.W.2
1) An incised wound over the left Thenar space hand 3" x 1" x +" bleeding.
2) An incised wound over the Hypo Thenar left hand 4" x 1" x 1" bleeding.
3) An incised wound over the right arm upper end 3" x 1" x 1" bleeing.
4) An incised wound over the left thumb palmar surface 1 +" x +" x +" bleeding.
5) Tenderness over the left knee.

The above extract of injuries reflects the graveness of the injuries sustained by P.Ws.1 and 2 during the attack. P.Ws.11 and 12 opine that these grave injuries would have been caused only by using deadly weapons. The evidence of P.Ws.11 and 12 in the light of the documentary evidence, viz., accident registers (Exs.P15 and 16) and Medicolegal Examination Reports (Exs.P17 and 18) show that both the Conductor (P.W.1) and Driver (P.W.2) sustained minimum of 5 to 6 injuries which would show that P.Ws.1 to 4 had sufficient time to see the accused attacking P.Ws.1 and 2 after the light was switched on by P.W.2. Therefore, the argument of the learned counsel for the appellant that P. Ws.1 to 4 could not have identified the accused as though the entire occurrence had taken place in the dim light is liable to be rejected.

10.17. Of course, there may be discrepancies with regard to the

description of the weapons used for the commission of the crime in question as pointed by Mr.Rajkumar Robert. But, once the injuries sustained by P.Ws.1 and 2 corroborate with the opinion of the Doctor (P.W.12) that the injuries would have been caused by using the deadly weapons marked as M.Os.10 to 13, in my considered opinion, the minor discrepancies and variations in describing the weapons in Ex.P.1, and by P. Ws.1 to 4 shall not have any credibility to prevail over the case of the prosecution.

10.18. Assuming the earliest statement of P.W.1 (Ex.P1), as well as the F.I.R. (Ex.P19) consist of some minor discrepancies with reference to the overt act by the accused, the same would not, by itself, vitiate the case of the prosecution. It is a trite law that F.I.R. is not a substantive piece of evidence, and it is relevant only in judging the veracity of prosecution case. The value to be attached to the FIR depends on the facts of each case. Only the essential or broad picture need be stated in the F.I.R. and all minute details need not be mentioned therein. F.I.R. need not contain details of the occurrence as if it were an "encyclopaedia" of the occurrence. It may not be even necessary to catalogue the overt acts therein. Non mentioning of some facts or vague reference to some other facts in the F.I.R. is not fatal, vide BALDEV SINGH Vs. STATE OF PUNJAB reported in AIR 1996 SC 372.

10.19. That apart, the evidence of the chance witness (P.W.5), further strengthens the case of the prosecution as the travel of P.W.5 in the lorry which came from the opposite direction at the time of occurrence was clearly spoken by P.Ws.1 to 4.

10.20. The lapses on the part of the Investigating Officer, for not sending the material objects, such as cash bag (M.O.1), rexin bag (M.O.2), white shirt (M.O.3), checked lungi (M.O.4), identity card (M.O.6), currencies (M.Os.20, 22, 24 & 26) and t ts (M.Os.21, 23, 25 and 27), for finger print test to connect the accused in the crime and for not sending the blood stained weapons (M.Os.10 to 13) for Serologist's report would not benefit the accused, as the efforts of the Criminal Court should not be to prowl for imaginative doubts, unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity, as held in STATE OF RAJASTHAN Vs. TEJARAM reported in 1999 SCC (Cri) 436. Hence, the absence of the report for the finger prints of the accused on the material objects or the absence of Serologist's report with respect to the blood stains found on the material objects M.Os.10 to 13 could not be a justification to reject the evidence of the injured eye witnesses (P.Ws.1 and 2), whose evidence corroborates with that of the other eye witnesses (P.Ws.3 and 4) who travelled in the same bus, Mahazar witness (P. W.7), investigating Officer (P.W.14), and the medical evidence of P. Ws.11 and 12 read with the accident registers (Exs.P.15 and 16) and Medicolegal Examination Reports (Exs.P17 and 18).

10.21. In view of the foregoing discussion, in my considered opinion, the prosecution has proved its case against the appellants beyond reasonable doubt and therefore, I do not find that the trial Court has committed any error in convicting and sentencing so as to justify any interference by this Court.

In the result, the appeals fail and the same are dismissed.

Index :Yes
Internet:Yes

atr/sasi

To:

1. The Assistant Sessions Judge,
Arani
2. The Public Prosecutor
High Court, Chennai.